

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ROBERT LEE CODY, ID # 1374410 ,)	
Petitioner,)	
vs.)	No. 3:09-CV-0113-B (BH)
)	
NATHANIEL QUARTERMAN, Director,)	Referred to U.S. Magistrate Judge
Texas Department of Criminal)	
Justice, Correctional Institutions Division,)	
Respondent.)	

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636(b) and an order of the Court in implementation thereof, subject cause has previously been referred to the United States Magistrate Judge. The findings, conclusions, and recommendation of the United States Magistrate Judge are as follows:

I. BACKGROUND

In January 2009, petitioner, an inmate currently incarcerated in the Texas Department of Criminal Justice - Correctional Institutions Division (“TDCJ-CID”), filed this petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 to challenge a June 5, 2006 Dallas County conviction (Appellate Cause No. 05-06-01222-CR) for which he received a forty year sentence. (*See* Pet. Writ Habeas Corpus (“Pet.”) at 2.) Respondent is Nathaniel Quartermann, Director of TDCJ-CID.

On January 22, 2009, the Court issued a Notice of Deficiency and Order wherein it notified petitioner that he had not paid the requisite filing fee nor submitted a request to proceed *in forma pauperis* with a required certificate of inmate trust account. It granted him twenty days to cure the deficiency and warned him that the failure to do so may result in the dismissal of this action pursuant to Fed. R. Civ. P. 41(b). To date, petitioner has not cured the deficiency.

II. INVOLUNTARY DISMISSAL

Rule 41(b) of the Federal Rules of Civil Procedure permits a court to dismiss an action *sua sponte* for failure to prosecute or follow orders of the court. *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988). This authority flows from a court's inherent power to control its docket, prevent undue delays in the disposition of pending cases, and avoid congested court calendars. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-31 (1962). Petitioner has failed to comply with the order of the Court that he file a request to proceed *in forma pauperis* or pay the filing fee within twenty days of January 22, 2009. Accordingly, the Court should dismiss this action without prejudice for failure to follow an order of the Court.

III. RECOMMENDATION

For the foregoing reasons, it is recommended that the Court dismiss the instant action without prejudice pursuant to Fed. R. Civ. P. 41(b) for petitioner's failure to comply with an order of the Court.

SIGNED this 27th day of February, 2009.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

The United States District Clerk shall serve a copy of these findings, conclusions, and recommendation on all parties by mailing a copy to each of them. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to these findings, conclusions, and recommendation must file and serve written objections within ten days after being served with a copy. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. Failure to file written objections to the proposed findings, conclusions, and recommendation within ten days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (*en banc*).


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE